



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN, TEXAS 78711

April 28, 1969

Dr. J. E. Peavy
Commissioner of Health
State Department of Health
Austin, Texas

Opinion No. M-383

Re: Whether the provisions of Article 165-3a, V.C.S., governing regulation and importation of grade "A" milk are applicable to the regulation and importation of cream and other milk products.

Dear Dr. Peavy:

Your request for the opinion of this office presents the following question for consideration:

"Do the provisions of Article 165-3a, relating to the regulation of the importation of grade 'A' pasteurized milk and/or grade 'A' raw milk for pasteurization, include and apply to the regulation of the importation of cream and other milk products?"

The "Texas Equal Health Standard Milk Sanitation Act of 1961" is embodied in Article 165-3a, Vernon's Civil Statutes, to which your inquiry is directed. Section 2 of same sets out the declaration of purpose of the act in these words:

"The purpose of this Act is to utilize effectively existing agencies and departments in regulating, processing, and distributing milk and milk products to the end that Texas consumers will be assured of a full supply of wholesome, high quality milk, cream, and milk products by requiring that all Grade 'A' pasteurized milk and/or Grade 'A' raw milk for pasteurization shipped into Texas

be produced under rules, regulations, and statutes providing standards as high as or higher than those provided by the Texas Milk Grading and Labeling Law, Chapter 172 (codified as Article 165-3, Vernon's Annotated Civil Statutes), Acts of the 45th Legislature, Regular Session, 1937, as amended, and any other statutes, rules, and regulations governing the production of milk in Texas." (Emphasis added.)

Referring especially to the underlined portions of the foregoing provision, the clear purpose of the act is to help provide Texas consumers with "wholesome, high quality milk, cream, and milk products." The language is equally clear in stating that this purpose is to be carried out by regulating "all Grade 'A' pasteurized milk and/or Grade 'A' raw milk for pasteurization shipped into Texas," but not by regulating cream and other milk products shipped into Texas.

Section 2 of Article 165-3a consists of one sentence. In the first part of said sentence, wherein the purpose of the act is set out, milk and milk products are spoken of conjunctively. However, when the method of implementing the ascribed purpose is stated, the Legislature addressed itself only to "Grade 'A' milk and/or Grade 'A' raw milk for pasteurization," thereby disjoining cream and milk products from the list of items to be regulated by the act.

Further, in Section 3 of Article 165-3a, wherein the standards to be followed, and provisions for inspection, are set out, the phrase "Grade 'A' pasteurized milk and/or Grade 'A' raw milk for pasteurization" is used repeatedly without any mention of cream or milk products.

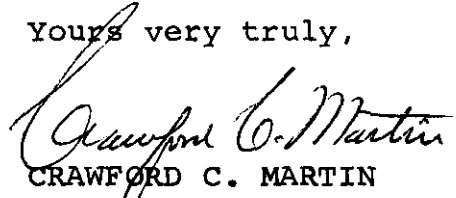
In light of the foregoing, and consistent with the holding in Attorney General's Opinion No. M-320 (1968), it is the opinion of this office that Article 165-3a does not include and apply to the regulation of the importation of cream and other milk products.

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S U M M A R Y

Article 165-3a, V.C.S., which governs inspection of "Grade 'A' pasteurized milk and/or Grade 'A' raw milk for pasteurization" to be shipped into Texas, does not regulate cream and other milk products shipped into Texas.

Yours very truly,



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